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MAY 21 1994  
HUB LAW OFFICES

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF MARIN

12 CHURCH OF SCIENTOLOGY )  
13 INTERNATIONAL, a California not- )  
for-profit religious corporation; )

14 Plaintiffs, )

15 vs. )

16 GERALD ARMSTRONG; MICHAEL WALTON; )  
17 et al., )

18 Defendants. )

19 \_\_\_\_\_ )  
GERALD ARMSTRONG, )

20 Cross-Complainant, )

21 vs. )

22 CHURCH OF SCIENTOLOGY )  
23 INTERNATIONAL, a California )  
Corporation; DAVID MISCAVIGE; )  
24 DOES 1 to 100; )

25 Cross-Defendants. )  
\_\_\_\_\_  
26  
27  
28

) CASE NO. 157 680

) CHURCH OF SCIENTOLOGY  
) INTERNATIONAL'S MEMORANDUM  
) OF POINTS AND AUTHORITIES  
) IN SUPPORT OF ITS DEMURRER  
) TO GERALD ARMSTRONG'S  
) SECOND AMENDED CROSS-  
) COMPLAINT

) DATE: June 10, 1994

) TIME: 9:00 a.m.

) DEPT: 1

) DISCOVERY CUT-OFF: None

) MOTION CUT-OFF: None

) TRIAL DATE: None

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1 I. INTRODUCTION

2 On April 4, 1994, this Court sustained the demurrer filed by  
3 plaintiff and cross-defendant Church of Scientology International  
4 ("the Church") and gave defendant and cross-complainant Gerald  
5 Armstrong [Armstrong] leave to amend his complaint for abuse of  
6 process "to state a cause of action, if he can." [Ex. 1 to Third  
7 Request for Judicial Notice, concurrently filed.] Armstrong's  
8 Second Amended Cross-complaint, an effort precisely reminiscent  
9 of his first two attempts, demonstrates that he is incapable of  
10 stating a viable cross-claim for abuse of process. The Church's  
11 demurrer should be sustained once again, this time with  
12 prejudice.

13 Armstrong's original and first amended cross-claims for  
14 abuse of process suffered from three essential flaws: they  
15 sought relief for alleged conduct which (1) predated the statute  
16 of limitations; (2) was already the subject of litigation between  
17 the parties in Los Angeles; and/or (3) was absolutely privileged.  
18 Armstrong's third attempt to state a claim for abuse of process  
19 suffers from these same flaws. Armstrong has added also added  
20 new allegations (aimed primarily at the Church's counsel) which  
21 do not even allege use of process at all. Further, Armstrong has  
22 made allegations which are demonstrably false, and which  
23 reference to this Court's own records show to be false.  
24 Armstrong's third attempt to amend his complaint thus has no  
25 merit, and its utter lack of merit would be apparent to any  
26 reasonable attorney. Plaintiff therefore requests that Armstrong  
27 and his attorney be sanctioned pursuant to Code of Civil  
28 Procedure Section 128.5 for bringing this frivolous, bad faith

1 claim.

2 **II. STATEMENT OF FACTS**

3 On October 7, 1992, defendant Armstrong filed a cross-  
4 complaint in the Los Angeles action, Church of Scientology  
5 International v. Armstrong, Case No. BC 052395, Los Angeles  
6 Superior Court ("the First Cross-complaint"). [Ex. 2 to Request  
7 for Judicial Notice.] The First Cross-complaint consists of  
8 claims for abuse of process and declaratory relief.

9 On March 3, 1993, the Church filed a motion for summary  
10 adjudication of, inter alia, the cause of action for abuse of  
11 process which is duplicated by Armstrong in his cross-complaints  
12 in this action. [Exs. 4 - 5 to Request for Judicial Notice.]  
13 All activity in that action, including adjudication of the  
14 Church's pending motion, was stayed by the Los Angeles court on  
15 March 23, 1993, pending resolution of an appeal, taken by  
16 Armstrong, of the order of preliminary injunction which the  
17 Church had obtained in May, 1992. [Ex. 6 to Request for Judicial  
18 Notice, Minute Order.] The Court of Appeal has now affirmed the  
19 Church's injunction. [Ex. 7 to Request for Judicial Notice]  
20 Resolution of the Church's dispositive motion as to Armstrong's  
21 abuse of process claim should thus occur in short order.

22 Defendant Armstrong filed his initial cross-complaint in  
23 this action a year after the filing of the First Cross-complaint,  
24 on November 30, 1993 ("the Second Cross-complaint"). The Second  
25 Cross-complaint was a word-processing repetition of the First  
26 Cross-complaint, and also asserted a cause of action for abuse of

27  
28

1 process.<sup>1</sup>

2 On January 4, 1994, the Church demurred to the Second Cross-  
3 complaint, arguing, inter alia, that the Second Cross-complaint  
4 duplicated the abuse of process claim contained in the First  
5 Cross-complaint. Armstrong did not oppose the demurrer, although  
6 he had more than 6 weeks to do so. Instead, on February 17,  
7 1994, one day before the demurrer was scheduled to be heard,  
8 Armstrong filed and served a first amended cross-complaint ("the  
9 Third Cross-complaint"). The Third Cross-complaint repeated  
10 Armstrong's claim for abuse of process, and added a second cause  
11  
12  
13

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14 <sup>1</sup> As can be seen from a review of the First and Second  
15 Cross-complaints, both documents are rambling diatribes which  
16 allege conduct by "the ORG" (First Cross-Complaint) or  
17 "Scientology" (Second Cross-complaint). Most of the allegations  
18 concern actions which allegedly happened to non-parties, or which  
19 supposedly occurred many years ago. The First Cross-complaint  
20 contains 72 paragraphs. Sixty of those paragraphs have been  
21 duplicated in the Second Cross-complaint, modified only to accuse  
22 "Scientology" instead of the "ORG," to add a few phrases of  
23 irrelevant hyperbole and to delete references to previously named  
24 cross-defendants. The origin of each paragraph in the Second  
25 Cross-complaint and in the First Cross-complaint can be easily  
26 observed by directly comparing the two documents, with the  
27 following correlation. The list shows the identity of paragraphs  
28 by listing first, the paragraph in the First Cross-complaint and  
second, the identical paragraph in the Second Cross-complaint,  
as: "First Cross-complaint Paragraph Number: Second Cross-  
complaint Paragraph Number": 1:1; 2:2; 4:3; 6:4; 7:5; 8:6; 9:7;  
12:8; 13:9; 14:10; 15:11; 16:12; 17:13; 18:14; 19:15; 20:16;  
21:17; 22:18; 23:19; 24:20; 25:21; 26:22; 27:23; 28:24; 29:25;  
30:26; 31:27; 32:28; 33:29; 34:30; 35:31; 36:32; 37:33; 38:34;  
39:35; 40:36; 41:37; 42:38; 43:39; 44:40; 45:41; 46:42; 47:43;  
48:44; 49:45; 50:46; 51:47; 52:48; 53:49; 54:50; 55:51; 56:52;  
57:53; 58:56; 64:57; 65:58; 66:59; 67:60; 68:61; 69:62. [Id.]

The only paragraphs which Armstrong did not duplicate from  
the First Cross-complaint consist of paragraphs identifying  
additional cross-defendants (e.g., ¶¶ 3, 5, 10, 11), none of whom  
were ever served, and paragraphs defining claims for declaratory  
relief and breach of contract (¶¶ 59 - 63, 70 - 72).

1 of action for declaratory relief.<sup>2</sup>

2 The Church demurred again, arguing that the Third Cross-  
3 complaint duplicated a prior action, was time-barred, and failed  
4 to allege any improper wilful act in the use of process, seeking  
5 relief instead for absolutely privileged conduct. This time,  
6 Armstrong opposed the demurrer. On April 4, 1994, this Court  
7 sustained the demurrer, finding, inter alia, that

8 As to the second cause of action for abuse of  
9 process, cross-complainant fails to allege any "wilful  
10 act in the use of process not proper in the regular  
11 conduct of the proceeding." See Oren Royal Oaks Venture  
12 v. Greenberg, Bernhard, Weiss & Karma, Inc. (1986) 42  
13 Cal.3d 1157, 1168. All of the allegations regarding  
14 plaintiff's pursuit of this litigation go to the first  
15 element of the cause of action "ulterior purpose." Id.  
16 Cross-complainant shall have 20 days' leave to amend to  
17 state a cause of action, if he can.

18 [Ex. 1, ¶ 3]. Demurrer was sustained without leave to amend as to  
19 the cause of action for declaratory relief. [Id. ¶ 2]

20 Armstrong's latest effort, the second amended cross-  
21 complaint ("the Fourth Cross-complaint") is no better than its  
22 earlier iterations. Armstrong begins by repeating, verbatim,  
23

---

24 <sup>2</sup> While the allegations are not identical in language, the  
25 subjects described are. The list shows the similarity of  
26 paragraphs by listing first, the paragraph in the First Cross-  
27 complaint and second, the paragraph describing the same claimed  
28 events in the Third Cross-complaint, as: "First Cross-complaint  
Paragraph Number: Third Cross-complaint Paragraph Number": 1:1;  
2:2; 6:4; 7:5; 8:6; 12:8, 13:9 -12, 18-20; 14:21-23; 14-20:26-34;  
24:37-40; 27:41; 30:42; 32-40:42; 41-42:43-44; 53:45-46; 54-  
56:47; 60-62:55(a); 65:57; 66:58, 60; 67:61; 68:62; 69:63.



1 allegations from the Third Cross-complaint which this Court has  
2 already held do not constitute abuse of process, and which  
3 describe actions that are either part of the First Cross-  
4 complaint, time-barred, or both.<sup>3</sup> In new paragraphs 62 - 74,  
5 Armstrong tries to assert that the following alleged conduct  
6 supports a claim for abuse of process:

- 7 1. Refusing to agree that other persons who entered into  
8 settlement agreements, like Armstrong's, which  
9 prohibited them from voluntarily assisting other  
10 litigants, need no longer be bound by their agreements  
11 [¶¶ 62 - 67];
- 12 2. Recording a lis pendens on the real property at issue  
13 in this action, and failing to pay a claimed award of  
14 attorneys' fees to a non-party because the lis pendens  
15 was allegedly expunged [¶ 68];
- 16 3. Filing a declaration mentioning Armstrong in another  
17 case, and "inducing" Armstrong to file a declaration in  
18 response [¶ 69];
- 19 4. Disseminating "internationally" an unidentified  
20 publication which supposedly defamed Armstrong [¶ 70];
- 21 5. Making "knowingly false and defamatory statements"  
22 about Armstrong in this litigation [¶ 71], and lacking  
23 evidence to support the claims made [¶ 73];
- 24 6. Owing him a debt, which he apparently claims arises out  
25 of the settlement agreement that he refuses honor, and  
26

---

27 <sup>3</sup> Plaintiff has separately moved to strike these allegations,  
28 ¶¶ 9 - 59, which newly repeat inflammatory evidentiary claims which  
can have no bearing on his claim for relief here.

1 not paying it [¶ 72]; and

2 7. Refusing to meet with him to discuss settlement of this  
3 action [¶ 74].

4 As demonstrated below, none of these allegations delineates  
5 a "wilful act in the use of process not proper in the regular  
6 conduct of [a] proceeding." Oren Royal Oaks, supra. Stripped of  
7 their inflammatory rhetoric, each of the allegations describes  
8 conduct which (1) is time-barred; (2) is privileged; and/or (3)  
9 does not use the process of the court at all.

10 **III. DEMURRER MUST BE SUSTAINED AS TO ARMSTRONG'S**  
11 **CAUSE OF ACTION FOR ABUSE OF PROCESS**

12 **A. Demurrer Must Be Sustained Because Armstrong Has Not**  
13 **And Cannot Allege Facts Sufficient To State A Claim For**  
14 **Abuse Of Process**

15 **1. The Conduct Alleged To Have Occurred Before November**  
16 **30, 1992 Is Precluded by the Statute of Limitations**

17 The one-year statute of limitations pursuant to Code of  
18 Civil Procedure Section 340 applies to a cause of action for  
19 abuse of process. Thornton v. Rhoden (1966) 245 Cal.App.2d 80,  
20 95, 53 Cal.Rptr. 706, 717. In Thornton, the plaintiff alleged  
21 that defendant had abused process by taking, transcribing and  
22 filing a deposition in which the defendant made false and  
23 defamatory claims. The deposition was taken and transcribed more  
24 than one year before the action for abuse of process was filed,  
25 and filed one year exactly before the filing of the abuse of  
26 process complaint. The Court of Appeal found that the alleged  
27 taking and transcribing of the deposition were beyond the  
28 statute, and could not be considered part of the plaintiff's

1 abuse of process claim. Id.<sup>4</sup>

2 Here, alleged conduct which purportedly occurred prior to  
3 November 30, 1992 is similarly beyond the statute of limitations,  
4 and any abuse of process claim which could possibly attach to  
5 those claims (and the Church considers that none could) is time-  
6 barred. On the face of the Fourth Cross-complaint, the conduct  
7 alleged in paragraphs 9 through 46 and 60 through 62 is alleged  
8 to have occurred before November 30, 1992. Accordingly, the  
9 conduct alleged in those paragraphs is barred by the statute of  
10 limitations.

11 2. The Conduct Post-November 30, 1992 Cannot Be the Basis  
12 For An Abuse of Process Claim Because It Does Not  
13 Describe Use of Process And/or Is Privileged

14 To state a claim for abuse of process, a plaintiff must  
15 allege two elements: "first, an ulterior purpose, and second, a  
16 wilful act in the use of the process not proper in the regular  
17 conduct of the proceeding." Oren Royal Oaks Venture v.  
18 Greenberg, Bernhard, Weiss & Karma, Inc. (1986) 42 Cal.3d 1157,  
19 1168, 232 Cal.Rptr. 567, 728 P.2d 1202, quoting Templeton Feed &  
20 Grain v. Ralston Purina Co. (1968) 69 Cal.2d 461, 466, 72  
21 Cal.Rptr. 344, 446 P.2d 152. Here, just as in the earlier  
22 versions of the cross-complaint, Armstrong has repeatedly alleged  
23 an ulterior purpose, but has failed to allege any "wilful act in  
24 the use of process not proper in the regular conduct of the  
25 proceeding."

---

26 <sup>4</sup> The court went on to hold that defendant's actions were  
27 privileged, and "even if we disregard the privilege, it is  
28 obvious that just taking the ordinary steps in connection with  
the taking, transcribing and filing of the deposition cannot be  
an abuse of process." 53 Cal.Rptr. at 720.

1 Armstrong's new claims allege, that his attorney attempted,  
2 unsuccessfully, to persuade the Church's attorney to "release"  
3 non-parties from contractual obligations which prevented them  
4 from assisting Armstrong in this or other litigation. Ms.  
5 Bartilson's refusal to permit the Church to abjure portions of  
6 agreements entered into in 1986 is, Armstrong argues, an "abuse  
7 of process."<sup>5</sup>

8 Since Armstrong himself is presently enjoined by the Los  
9 Angeles Superior Court from voluntarily assisting other litigants  
10 under the provisions of just such a settlement agreement [Ex. 8  
11 to Request for Judicial Notice], an injunction whose issuance has  
12 just been affirmed by the Court of Appeal [Ex. 7 to Request for  
13 Judicial Notice], Armstrong's request that the Church abandon the  
14 similar benefit which it bargained for and received in the form  
15 of settlement agreements with third parties is ludicrous.  
16 Nothing obligates the Church to accomodate Armstrong in this  
17 manner, just as nothing prevents him from using the discovery  
18 processes set forth in the Code of Civil Procedure if he truly  
19 believes that these individuals have any testimony to give which  
20 is relevant to the Church's claim that he fraudulently  
21 transferred his property to his co-defendants.

---

22  
23 <sup>5</sup> The history of this, recounted in the new cross-complaint,  
24 is telling. Greene first made this demand, not in conjunction with  
25 this action, but in conjunction with the Los Angeles case, in  
26 February, 1992. His request was summarily rejected by Ms.  
27 Bartilson. Thereafter, Greene did nothing to attempt to gain any  
28 discovery from these individuals whatsoever. His request to Ms.  
Bartilson was renewed on March 30, 1994, just after this Court  
sustained the demurrer, and is a transparent attempt to transmute  
a rejection which occurred prior to the running of the statute of  
limitations into a new "act." However, neither act of rejection  
constitutes a "use of process," rendering Greene's attempts to  
create a claim a nullity.

1           Moreover, the refusal by Ms. Bartilson to capitulate to  
2 Greene's demands can hardly be termed a "use" of the processes of  
3 the court. "The gist of the tort [of abuse of process] is the  
4 misuse of the power of the court: It is an act done under the  
5 authority of the court for the purpose of perpetrating an  
6 injustice. . . ." Younger v. Solomon (1974) 38 Cal.App.3d 289,  
7 297, 113 Cal.Rptr. 113, 118 (emphasis supplied). While "process"  
8 has been broadly interpreted to include an entire range of  
9 procedures necessary to litigation, Barquis v. Merchants  
10 Collection Association (1972) 7 Cal.3d 94, 104, 101 Cal.Rptr.  
11 752, 496 P.2d 817, it has not been stretched to include  
12 correspondence between attorneys regarding settlement agreements  
13 with third parties. These paragraphs may not be used to support  
14 an abuse of process claim, because they do not allege any use of  
15 process at all.

16           Similarly, Armstrong's claims that the Church disseminated  
17 "internationally" an unidentified publication which supposedly  
18 defamed Armstrong [¶ 70], owes him an debt [¶ 72], and refused to  
19 meet with him to discuss settlement of this action [¶ 74], even  
20 if assumed to be true,<sup>6</sup> do not plead any "use" of the court's  
21 processes, much less a "misuse" of the court's processes.

22           The remaining new allegations -- that the Church recorded a  
23 lis pendens on the real property at issue in this action to  
24 protect its interests; filed a declaration mentioning Armstrong  
25 in another case, which "induced" Armstrong to further breach his  
26 agreement; and made "knowingly false and defamatory statements"

---

27  
28           <sup>6</sup> All are, of course, denied by the Church.

1 about Armstrong in this litigation [¶ 71], which was supposedly  
2 filed without sufficient supporting evidence [¶ 73] -- all  
3 describe conduct which is absolutely privileged.

4 Civil Code Section 47 provides in relevant part that "A  
5 privileged publication or broadcast is one made: . . . (b) In  
6 any judicial proceeding. . . ." As the California Supreme Court  
7 recently re-emphasized,

8 For well over a century, communications with "some  
9 relation" to judicial proceedings have been absolutely  
10 immune from tort liability by the privilege codified as  
11 section 47(b). At least since then-Justice Traynor's  
12 opinion in Albertson v. Raboff (1956) 46 Cal.2d 375,  
13 295 P.2d 405, California courts have given the  
14 privilege an expansive reach. Indeed, as we recently  
15 noted, "the only exception to [the] application of  
16 section 47(2) [now § 47(b)] to tort suits has been for  
17 malicious prosecution actions. [Citations]."

18 Rubin v. Green (1993) 4 Cal.4d 1187, 1194, 17 Cal.Rptr.2d 828,  
19 831, quoting Silberg v. Anderson (1990) 50 Cal.3d 205, 216, 266  
20 Cal.Rptr. 638, 786 P.2d 365. In Rubin, the court held that even  
21 communications and communicative conduct bearing "some relation"  
22 to an anticipated lawsuit were privileged. Id. at 832 - 838.

23 Moreover, in Oren Royal Oaks, supra, the California Supreme  
24 Court, upholding a long line of appellate court cases, held that  
25 filing or maintaining a lawsuit cannot support a claim for abuse  
26 of process, stating:

27 The relevant California authorities establish  
28 . . . that while a defendant's act of improperly  
instituting or maintaining an action may, in an  
appropriate case, give rise to a cause of action for  
malicious prosecution, the mere filing or maintaining  
of a lawsuit -- even for an improper purpose -- is not  
a proper basis for an abuse of process action. The  
overwhelming majority of out-of-state precedents have  
reached the same conclusion.

42 Cal.3d at 1169 (citations omitted).

1 Here, Armstrong claims that the Church lacks evidence to  
2 support its claims, and has defamed him in filings before this  
3 court. If Armstrong's allegations are true, and he proves them  
4 in defense of this action to the point of a resolution in his  
5 favor, then he may be able to use these claims to state a cause  
6 of action for malicious prosecution. However, no claim has been  
7 stated for abuse of process.

8 Indeed, the privilege for publications in a lawsuit applies  
9 not simply to a complaint, but also to all publications in  
10 judicial proceeding, so long as the publication "(1) . . . was  
11 made in a judicial proceeding; (2) had some connection or logical  
12 relation to the action; (3) was made to achieve the objects of  
13 the litigation; and (4) involved litigants or other participants  
14 authorized by law." Umansky v. Urquhart (1978) 84 Cal.App.3d  
15 368, 371, 148 Cal.Rptr. 2d 547.

16 Armstrong has identified no particular publication, made in  
17 connection with these proceedings, which does not meet these four  
18 criteria. Indeed, Armstrong alleges that the publications which  
19 have supposedly defamed him have been made to the Court herein.  
20 [Cross-complaint, ¶ 70.] He has alleged that a declaration of  
21 David Miscavige in the case of United States v. Fishman, Case No.  
22 CV 91-6426 HLH(Tx), United States District Court for the Central  
23 District of California, supposedly was filed for an ulterior  
24 purpose. This Court may take judicial notice of the declaration,  
25 Exhibit 9 to Request for Judicial Notice. The declaration was  
26 filed in response to allegations made by the defendant in that  
27 action, including allegations made about Armstrong. [See Ex. 9 at  
28 ¶ 54.] It had a logical connection to the action, was filed to

1 refute facts alleged in a motion brought by the opposing party,  
2 and involved the litigants to that action and a proposed deponent  
3 (the declarant). The filing of the declaration, then, was an  
4 absolutely privileged act, which cannot form the basis for an  
5 abuse of process claim.

6 The recording of the lis pendens was equally privileged. A  
7 review of this Court's own files will reveal that Armstrong's  
8 allegations in this regard are absolutely false. The Church did  
9 file a lis pendens to protect its rights in this action. It  
10 violated no law in doing so. When non-party Solina Walton  
11 requested that the Church lift the lis pendens so that she could  
12 re-finance the property, the Church did so. [Ex. 10 to Request  
13 for Judicial Notice, Declaration of Linda Fong, ¶ 7.] Walton did  
14 file a motion for expungement before the Church agreed to  
15 temporarily discharge the lis pendens, but an agreement was  
16 reached prior to hearing on the motion, and no order was ever  
17 entered. Thereafter, the Church re-filed its lis pendens, again  
18 for the precise purpose stated in the statute authorizing such  
19 notices. Just as the filing of this action cannot support a claim  
20 for abuse of process, neither can the filing of a lis pendens.

21 B. Demurrer Must Be Sustained Because There Is Another  
22 Action Pending Between The Same Parties On The Same  
Cause of Action

23 Code of Civil Procedure Section 430.10(c) provides, in  
24 relevant part, that a cross-defendant may object to a cross-  
25 complaint by demurrer when, "[t]here is another action pending  
26 between the same parties on the same cause of action." Demurrer  
27 is proper in such a case because the first suit affords an ample  
28 remedy, rendering the second action unnecessary and vexatious.



1 National Auto. Ins. Co. v. Winter (1943) 58 Cal.App.2d 11, 16,  
2 136 P.2d 22, 25.

3 Here, through the addition of a few new allegations --  
4 amendments which allege only privileged or non-judicial conduct,  
5 see Part II A 2, supra -- Armstrong seeks to allege a "different"  
6 cause of action for abuse of process. These changes do nothing  
7 to defeat the Church's demurrer.

8 To prevail on a demurrer pursuant to §430.10(c), the Church  
9 must demonstrate that the cause of action for abuse of process  
10 alleged in the First Cross-complaint is, for all practical  
11 purposes, identical with the cause of action for abuse of process  
12 alleged in the Second Cross-complaint. Burnard v. Irigoyen  
13 (1943) 56 Cal.App.2d 624, 631, 133 P.2d 3, 7. Moreover, the  
14 second claim must involve the same parties that were involved in  
15 the first claim. W.R. Grace & Co. v. California Employment Com.  
16 (1944) 24 Cal.2d 720, 727, 151 P.2d 215, 219. The parties must  
17 stand in the same relative positions as plaintiff and defendant  
18 in the two actions. Western Pine & Steel Co. v. Tuolumne Gold  
19 Dredging Corp. (1944) 63 Cal.App.2d 21, 29, 146 P.2d 61, 65.  
20 Finally, the moving party must show that there is, in fact,  
21 another pending action, which was commenced before the filing of  
22 the action in which demurrer is urged. Kirman v. Borzage (1949)  
23 89 Cal.App.2d 898, 903, 202 P.2d 303. An action is deemed to be  
24 pending from the time of its filing until its final determination  
25 on appeal. C.C.P. §1049.

26 Here, Armstrong has not alleged different facts in support  
27 of his abuse of process claim. Armstrong's claims of years of  
28 "harassment" by the Church, which foolishly paid him large sums

1 of money in settlement of one false claim, are already the  
2 subject of litigation in Los Angeles. Armstrong may not re-  
3 litigate the same claims here. Similarly, there is an identity of  
4 parties between the two actions. Both of the cross-defendants  
5 named in the Second Cross-complaint were named as cross-  
6 defendants by Armstrong in the First Cross-complaint.<sup>7</sup> In the  
7 second action, as in the first, only the Church has been served  
8 with the Cross-complaint. Moreover, the Church and Armstrong  
9 stand in precisely the same position in the Third Cross-complaint  
10 as they do in the First. Finally, it is plain from court records  
11 which this Court may judicially notice that the First Cross-  
12 complaint was commenced before the Fourth Cross-complaint, and is  
13 still pending. [Exs. 2, 3, 4, 5, 6 and 7 to the Request for  
14 Judicial Notice].

15 With this identity of claims and parties present in a  
16 currently pending prior action, this Court must sustain the  
17 Church's demurrer pursuant to C.C.P. § 430.10(c).

18 **IV. ARMSTRONG AND HIS LAWYER SHOULD BE SANCTIONED FOR**  
19 **FILING A FRIVOLOUS CROSS-COMPLAINT**

20 Section 128.5 of the Code of Civil Procedure provides in  
21 relevant part that, "Every trial court may order a party, the  
22 party's attorney, or both to pay any reasonable expenses,  
23 including attorney's fees, incurred by another party as a result

24 <sup>7</sup> The fact that Armstrong has named, but not served, other  
25 defendants in the first action is irrelevant. The only question  
26 to be decided is whether the rights of the parties to the second  
27 action will be completely adjudicated by the first. Because here  
28 all of the named parties to the second action (Armstrong, the  
Church and Mr. Miscavige) are also named parties to the first  
action, standing in the same relationship to one another, their  
collective rights will be completely determined in the first  
action, rendering the second action superfluous.

1 of bad-faith actions or tactics that are frivolous or solely  
2 intended to cause unnecessary delay. . ." The courts apply an  
3 objective standard in determining whether a lawsuit is frivolous,  
4 finding that a suit has no merit "where any reasonable attorney  
5 would agree that the action is totally and completely without  
6 merit." Finnie v. Town of Tiburon (1988) 199 Cal.App.3d 1, 12,  
7 244 Cal.Rptr. 581, quoting Winick Corp. v. County Sanitation  
8 Dist. No. 2 (1986) 185 Cal.App.3d 1170, 1176-1177, 230 Cal. Rptr.  
9 289. Here, Armstrong's new abuse of process claim is just as  
10 defective as his first two, and its lack of merit is plain to any  
11 reasonable attorney. He is simply not capable of stating any  
12 claim for relief for abuse of process in this action. Yet, the  
13 Church has been forced to expend attorney's fees not once, but  
14 three times to prepare demurrers to these harrassing cross-  
15 complaints. This time, Armstrong should be ordered to pay to the  
16 Church its reasonable expenses, including attorney's fees.

#### 17 V. CONCLUSION

18 Armstrong's Fourth Cross-complaint recites stale facts which  
19 do not result in a claim for abuse of process. The few  
20 allegations which concern matters not barred from consideration  
21 by the relevant statute of limitations are barred from  
22 consideration by the absolute privilege afforded by Civil Code  
23 Section 47(b). Moreover, the Fourth Cross-complaint is a clever  
24 duplicate of an action already pending between these parties in  
25 Los Angeles. Armstrong's frivolous reassertion of these claims  
26 here wastes the time of both the Court and the Church. Armstrong  
27 has already amended this cross-complaint twice, to this fruitless

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effect. The Church's demurrer must be sustained with prejudice,  
and Armstrong and his lawyer sanctioned.

DATED: May 20, 1994

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